Supreme Court, U.S.
FILED
07-950 JAN 16 2008
OFFICE OF THE CLERK

No. _____

In The
SUPREME COURT OF THE UNITED STATES

IN RE JOHN THOMAS TELLO,
Petitioner – Non-appellant – Relator

(from **TELLO v. QUARTERMAN**)

ON PETITION FOR A WRIT OF MANDAMUS
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

ORIGINAL PETITION FOR A WRIT OF MANDAMUS

JOHN THOMAS TELLO
No. 1289623
TDC ROACH UNIT, I-211
RR 2 BOX 500
15845 FM 164
CHILDRESS, TX 79201

Questions Presented for Mandamus

Appellate court jurisdiction

1. May the Fifth Circuit fabricate an appeal?

Mandamus

2. Does the Fifth Circuit have a clear and non-discretionary duty to vacate its "orders" in, especially the dismissal of, the fabricated appeal?

Parties

The mandamus sought is directed to the Fifth Circuit. The parties are as follows:

Appellate court

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Hence, inclusion of the Solicitor General's Office

Plaintiff, Non-Appellant, Relator

JOHN THOMAS TELLO

Defendant, Non-Appellant, Respondent

NATHANIEL QUARTERMAN, Director, TDCJ

Thus, also GREG ABBOTT, Attorney General, STATE OF TEXAS

Petition for a Writ of Mandamus

Tello petitions for a writ of mandamus to the Fifth Circuit as follows:

Citations to decisions below

None

Jurisdiction

(i) Date Order Was Entered
Refusal to address motion to vacate was entered 26 Dec 2007

(ii) Extension N/A

(iii) Rule 12.5 N/A

(iv) Statutes, Jurisdiction
28 U.S.C. § 1651(a).

(v) Regarding notice of statutory challenge
No statutory challenge.

Non-Argument Calendar Preferred

Oral argument is not expected to aid in the resolution of these issues.

Statement of the Case

Trial Court Jurisdiction

28 U.S.C. 2241(a) (§ 2254 habeas).

The habeas—3:07-CV-535 (N.D. Tex.)

The trial Record details the illegality of Tello's incarceration. The political intrigue is also detailed of Record. The respected magistrate determined that Tello had not fully exhausted state remedies. He's right, of course. Tello has no desire to ***have*** to add

any *more* state judicial officers as defendants to his commercial claims once this illegal incarceration episode ends. In short, Tello is doing everything he knows to do to mitigate damages in that regard. [1]

The focus of the appeal

Tello is challenging the statutory restriction of subject matter jurisdiction. In the same way that an exception exists for appeal of Remand orders, [2] Tello sees an exception to the limitation on federal jurisdiction where the state judiciary are so blatantly political in their analysis of his case. Thus, the person incarcerated by a state judgment who also faces nothing but political [3] analysis by the state judiciary available (due to the location of the incarceration) should not be compelled (1) to waste his time proving, again, and more, the political nature of the state judiciary [4] or (2) to have to wait for a transfer of location to find a different part of the state judiciary to whom to present his habeas petition. Instead, he should be able to access the federal judiciary, directly, right then. It's a cost-savings, damages-mitigating application of the state equivalent of § 455(a).

Tello appealed to the DC Circuit

See Tello v. Quarterman, No. 07-7147 (D.C. Cir.).

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[1] Where Tello even tried to mitigate the Fifth Circuit's exposure, they found a way to thrust themselves upon him, anyway. "Tello litigation" is a magnet to them. The state judiciary are greatly encouraged by the Fifth Circuit's lead.

[2] E.g., No. 07-40130 (5th Cir.).

[3] I.e., facial, blatant lawlessness.

[4] Some things don't change. *Cf. Interstate Circuit v. Dallas*, 390 U.S. 676 (1968).

The Fifth Circuit's fabricated appeal

Tello never appealed to the Fifth Circuit. Tello never received the Notice they say they sent. Otherwise, this would have been addressed sooner. Tello *did* receive the "dismissal" of that fabricated appeal. [5] Tello promptly filed his motion to vacate. The Fifth Circuit promptly refused to recognize any error, thus to vacate; hence, this mandamus.

Argument

Appellate court jurisdiction

1. May the Fifth Circuit fabricate an appeal?

An appellate court's jurisdiction follows from the Notice of Appeal. Neither the appellate court nor the trial court can compel an appeal, much less compel the appellant's choice of appellate venue. Doing so is nothing shy of the basest in Record-tampering.

It's also tantamount to "representing" Tello!

Mandamus

2. Does the Fifth Circuit have a clear and non-discretionary duty to vacate its "orders" in, especially the "dismissal" of, the fabricated appeal?

No alternative avenue of relief—void judgment.

Reviewing *Kerr v. United States Dist. Court for N. Dist. of Cal.*, 426 U.S. 394, 403 (1976), Tello is satisfied that no other alternative exists. The "dismissal" is a void judgment.

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[5] How *does* Tello get the final "order" but not the Notice?!

NO NOTICE.

Tello never gave *or* received Notice of any "appeal" of this matter to the Fifth Circuit. *Cf. Harris v. Hardeman*, 55 U.S. (14 How.) 334, 339 (1852); *Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80 (1988) (even "meritorious defense" issue is irrelevant to question of Notice).

NO SUBJECT MATTER JURISDICTION.

There being no appeal *there*, the Fifth Circuit never had appellate jurisdiction. *Cf. Kircher v. Putnam Funds Trust*, 126 S. Ct. 2145 (2006).

Clear and indisputable.

Where there is neither Notice nor subject matter jurisdiction, the duty to vacate the "orders," especially the "dismissal," is both clear and indisputable.

Discretionary determination of appropriateness.

Whatever activity in addition to mandamus, *cf. Ex Parte Fahey*, 332 U.S. 258 (1947) (mandamus is reserved for the extreme cases), *Will v. United States*, 389 U.S. 90, 95 (1967) (mandamus appropriate to address "usurpation of power"), *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379. 383 (1953) (mandamus appropriate to address "clear abuse of discretion"), that is suitable to this Court and/or the Solicitor General's Office, including censure, sanctions, and a board of inquiry, is perfectly fine with Tello.

Epilog

It's impossible for Tello to fail to prosecute an appeal he never initiated. Also, the denial of access issue arising from the Fifth Circuit's extortionate sanctions against Tello isn't addressed, here, either, because there is no appeal to the Fifth Circuit. In

other words, the extortionate, retaliatory nature of those sanctions isn't relevant where there is no appeal before that court. It's still fascinating that irs.gov says not one word about the Tello "tax" case, which set the national "sanctions" record at the time!

Remedies Requested

Tello requests that this Court compel the Fifth Circuit to vacate all "orders" in, including the "dismissal" of, the phantom, fabricated appeal of Tello v. Quarterman, namely No. 07-11038 in the Fifth Circuit. Tello further requests any and all additional activity within the authority of this Court to issue or to initiate regarding the fabrication of that appeal so as to do what is possible to do to prevent recurrence. Tello also requests costs.

Respectfully submitted,

/s/ John Thomas Tello
John Thomas Tello
I reserve all my rights

Roach Unit, #1289623
RR 2 Box 500
15845 FM 164
Childress, TX 79201

Verification

Per 28 U.S.C. § 1746, under the penalty of perjury, I, John Thomas Tello, depose and declare (or certify, verify or state), that I am at least 21 years of age, that I am competent to make this Affidavit, that I have personal knowledge of these facts, and that these facts are true and correct.

The facts stated in this Petition for a Writ of Mandamus are true and correct.

I am using the postal service available to me in this facility. The date shown below is also the date on which I deposited this signed original in the mail.

Further, Declarant sayeth not.

Executed on this the _____ of January, 2008

/s/ John Thomas Tello
John Thomas Tello, Declarant

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Appendix A

Rule 14.1(i)(i)—Appellate Opinion(s)

2007 Dec 26—Clerk's Notice—Fifth Circuit's refusal to rule on motion to vacate

United States Court of Appeals

FIFTH CIRCUIT

OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

December 26, 2007

Mr John Thomas Tello
Texas Department of Criminal Justice
Institutional Division Roach Unit
#1289623
RR 2 Box 500
15845 FM 164
Childress, TX 79201

No. 07-11038 Tello v. Quarterman
USDC No. 3:07-CV-535

We received your motion to vacate dismissal. In light of your appeal being properly docketed in this court, and same having been dismissed for want of prosecution (failure to pay monetary sanctions imposed) we are taking no action on this motion.

Sincerely,
CHARLES R. FULBRUGE III, Clerk
By: */s/ Peggy O. Keller*
Peggy Keller, Deputy Clerk
504-310-7708

BR-9

Rule 14.1(i)(ii)—Additional Orders

2007 Dec 7—Clerk's Cover Letter with dismissal ruling of same date

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

December 7, 2007

Ms Karen S Mitchell, Clerk
Northern District of Texas, Dallas
United States District Court
Room 1452
1100 Commerce Street
Dallas, TX 75242

No. 07-11038 Tello v. Quarterman
USDC No. 3:07-CV-535

Enclosed is a certified copy of the judgment issued as the mandate.

Sincerely,
CHARLES R. FULBRUGE III, Clerk
By: */s/ Mary Stewart*
Mary Stewart, Deputy Clerk
504-310-7694

/mcs
cc: w/encl:
Mr John Thomas Tello

MDT-1

2007 Dec 7—Dismissal of fabricated appeal

United States Court of Appeals
Fifth Circuit
FILED
December 7, 2007
Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 07-11038

JOHN THOMAS TELLO
Petitioner - Appellant

v.

NATHANIEL QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION
Respondent - Appellee

Appeal from the United States District Court for the Northern District of Texas, Dallas

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CLERK'S OFFICE:

Under 5TH CIR. R. 42.3, the appeal is dismissed as of December 7, 2007, for want of prosecution. The appellant failed to timely comply with this Court's notice of October 4, 2007.

CHARLES R. FULBRUGE III
Clerk of the United States Court
of Appeals for the Fifth Circuit

By: */s/ Mary Stewart*
Mary Stewart, Deputy Clerk

ENTERED AT THE DIRECTION OF THE COURT

DIS-2

Rule 14.1(i)(iii)—Rehearing, or other extension

None

Rule 14.1(i)(iv)—Judgment of different date

No judgment of date different from an opinion.

Rule 14.1(i)(v)—Statutes and Rules

None

Rule 14.1(i)(vi)—Additional Essential Materials

Tello's Notice of Appeal

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JOHN THOMAS TELLO	§	
	§	
v.	§	Case No. 3:07-CV-0535-L
	§	
NATHANIEL QUARTERMAN	§	

TELLO'S PREMATURELY SUBMITTED NOTICE OF APPEAL

Prematurely Submitted Notice of Appeal

While TELLO hopes that this is not ever needed or activated, should habeas be denied, TELLO is continuing to mitigate damages by moving this matter along as promptly as is possible. So, if the habeas is denied, then TELLO appeals that final order of denial to the **United States Court of Appeals for the District of Columbia Circuit**.

TELLO notes the distinction between the original "district court of the United States" system, starting circa 1789, and the current "United States District Court" system, starting circa 1948. If we read 28 U.S.C. § 1294(1) literally, then there's a problem. If we read it to say that "district court of the United States" means "United States District Court," then venue is proper in the DC Circuit, because each and every "district" (circa 1948) is territorial to "this

state," of which DC is the capital. Thus, the DC Circuit embraces each and every "district" (circa 1948) that exists. Therefore, 28 U.S.C. § 1294(1) is satisfied.

Respectfully submitted,

/s/ John Tello
JOHN THOMAS TELLO
Without prejudice

Certificate of Service

By my signature below, I certify that I have caused to be served a true and correct copy of this document by Certified Mail on the following:

Nathaniel Quarterman
Director, TX Dept. of Criminal Justice
209 West 14th Street
Austin, Texas 78701

Since the statutes are challenged, the following are also served:

RICHARD B. ROPER, III
United States Attorney
Northern District of Texas
1100 Commerce, 3d Floor
DALLAS, TX 75242-1699

[ALBERTO R. GONZALES]
Attorney General, United States
950 Pennsylvania Avenue, N.W.
WASHINGTON, DC 20530

Dated: _____ /s/ John Tello
JOHN TELLO